IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.105 OF 1996

1. Ravindra Narayan Mhatre
Age - 30, residing at Wadkal
Taluka Pen, District Raigad ..Appellant.

V/s

The State of Maharashtra ..Respondents

Mr. S.V. Marwadi with Mr. A.P. Mundargi for the appellant.

Mr. A.M. Shringarpure, APP for the respondents - State.

CORAM : V.G.PALSHIKAR & R.C.CHAVAN, JJ

DATED : 5th August, 2005

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. Appellant seeks to challenge his conviction for offence punishable under section 302 of the Penal Code and resultant sentence of imprisonment for life inflicted upon him by the learned Sessions Judge, Raigad, Alibag.

2. Facts which led to prosecution of the appellant and three others are as under:-

. Appellant who was arrayed as accused No.2 and his brothers Janardan and Naresh who were arrayed as accused Nos. 1 and 3, Janardan's wife Tarabai who was

arrayed as accused No.4, and victim Shridhar were neighbours in village Wadkhal, Taluka Pen, District - Raigad. There were disputes between the two families in respect of boundaries of their respective houses and court-yards. On 5/11/1992, at about 7.00 a.m. when Shridhar, complainant's father, was cleaning his court-yard, all the accused persons abused Shridhar. Accused Nos. 1 to 3 were armed with sticks. Appellant - accused No.2 gave a blow by stick on the head of Shridhar, inflicting bleeding injury on Shridhar's head. Accused No.1 Janardan gave a blow by stick on Shridhar's right thigh. When complainant Shivaji rushed to the rescue of his father, appellant gave a blow by stick on Shivaji's right hand. Accused succeeded in running away with their sticks and then pelted stones from their own court-yard. Shridhar was first taken to hospital at Gadab and from there to Civil Hospital at Alibag from where he was shifted to J.J. Hospital at Bombay where he succumbed to his injuries. On a report by Shivaji an offence was registered and investigation started.

3. In the course of investigation, Police performed inquest and sent the dead body for post-mortem examination, caused the panchanama of the spot as also sketch of spot to be drawn up, arrested the accused, interrogated them, recovered sticks, examined

witnesses, sent incriminating articles to the Forensic Science Laboratory and, on completion of investigation, chargesheeted the accused. The learned Judicial Magistrate, First Class, Pen, committed the case to the Court of Sessions at Raigad.

4. The learned Sessions Judge, Raigad charged all the accused of the offences punishable under sections 302, 336, 323 and 504 read with section 34 of the Penal Code. All the accused pleaded not guilty and hence were put on trial. In its attempt to bring home the guilt of the accused, the prosecution examined in all seven witnesses. Accused persons examined one witness in defence. The defence of the accused seems to be that the complainant's party itself charged at accused Ravindra, in which he was injured. The victim was hit by one of the sticks carried by the complainant's party itself. Upon consideration of the material before him, the learned Sessions Judge convicted the appellant of the offence punishable under section 302 of the Penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs 2000/- or, in default, to further imprisonment for one year. He acquitted all the accused persons of all other charges. Aggrieved thereby accused No.2 - Ravindra has appealed.

5. We have heard the learned counsel for the appellant as well as the learned Additional Public Prosecutor for the state. Notes of post-mortem examination at Exhibit 28 proved by P.W. 4- Dr. Vashe show that there were two surface wounds with three corresponding internal injuries on the skull. Vault of the skull had suffered fracture and the victim died due to intracranial haemorrhage on account of antemortem injuries to the skull. Out of remaining two wounds, one is contusion on the left arm. One abrasion on right ankle was found by the Medical Officer to be about 5 days old, obviously, not inflicted in the course of incident dated 5/11/1992. It may thus be seen that there were two major injuries on the head which led the victim's death.

6. Appellant himself admits that there was an engagement between the victim and atleast him since he claims to have been injured in the incident. His injuries are duly proved by D.W.1 - Dr. Jain. Dr. Jain stated that on 5/11/1992, he examined appellant - Ravindra and found one contused lacerated wound and two abrasions as certified by him in his certificate at Exhibit-42. It may also be seen that the complainant Shivaji - P.W. 2 admitted in cross examination that Ravindra - appellant had lodged a complaint against him and others in respect of the

incident and that he and his wife are facing a case before the Judicial Magistrate, First Class, Pen. It would have been useful had that case also been taken up by the learned Sessions Judge for trial along with Sessions Case against the appellant and others. The existence of a case against complainant and his wife, injury on appellant proved by D.W.1 - Dr. Jain, would indicate that the appellant participated in the incident which led to death of Shridhar.

7. P.W. 2- Shivaji, P.W. 3 - Shivaji's wife Sheetal, P.W. 5 - victim's widow Laxmibai, all state that the accused Ravindra had assaulted Shridhar on Shridhar's head. Even after taking into consideration hostility between the two families, the evidence of these three witnesses clearly indicates that the appellant - Ravindra was the author of the injury which led to death of Shridhar. There are no infirmities in their evidence and there are no reasons for these close relatives of the victim to name a wrong person and screen the real offender. The defence that Shridhar sustained injuries from stick wielded by one of the participants in the assault on complainant's side sounds improbable. In view of this the learned Sessions Judge rightly held that the appellant was the author of the injury which led to death of Shridhar.

8. The only question is : whether the appellant could be said to have inflicted this injury with the requisite intention or knowledge to bring his case within the ambit of section 300 of the Penal Code. The injury was inflicted in course of a quarrel. Thus it is not a part of premeditated attack. The weapon used is only a stick and there are only two blows given. This, in our opinion, would rule out the intention to cause death or intention to cause such bodily injury as the appellant knew to be likely to cause death of the victim, since no such special weakness of victim is show to exist. Also, injury intended could not be said to be sufficient in the ordinary course of nature to cause death. A blow or two by a stick may not be imagined to cause death though such blows on head may be contemplated to result in grievous injury. Considering the unexplained injury on appellant, it is obvious that victim received the blows in course of a fight. In such a case it would be improper to expect participants to act with surgical precision while attacking appellant. In view of this, we hold that the learned Sessions Judge ought to have convicted the appellant of an offence punishable under section 304 Part-II IPC rather than section 302 of the Code.

9. In this view of the matter, we set aside the conviction of the appellant of offence punishable under section 302 IPC and the resultant sentence imposed upon him. Instead, the appellant is convicted of offence punishable under section 304 Part-II of the IPC and sentenced to suffer rigorous imprisonment for seven years, which, in our opinion, will meet the ends of justice. One months' time is granted to the appellant to surrender to his bail. Upon appellant's surrendering to his bail, the learned Sessions Judge shall commit the appellant to prison to serve the rest of the sentence.

(V.G.PALSHIKAR, J.)

(R.C. CHAVAN, J.)